BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
RAOUF ANTOINE KAYALEH, M.D.	)	Case No. 800-2014-010295
Physician's and Surgeon's Certificate No. C41449	)	
Respondent	)	

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 17, 2018.

IT IS SO ORDERED: July 18, 2018.

MEDICAL BOARD OF CALIFORNIA

Ronald Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
State Bar No. 179733
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 269-6475
Facsimile: (213) 897-9395
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: RAOUF ANTOINE KAYALEH, M.D. 1125 East 17th Street, Suite E-109 Santa Ana, California 92701 Physician's and Surgeon's Certificate No. C 41449, Respondent.	Case No. 800-2014-010295 OAH No. 2017110124 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical Board of California ("Board"). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Rebecca L. Smith, Deputy Attorney General.

2. Respondent Raouf Antoine Kayaleh, M.D. ("Respondent") is represented in this proceeding by attorney Thomas M. Garberson, whose address is 2150 River Plaza Drive, Suite 250, Sacramento, California 95833.

3. On or about July 2, 1984, the Board issued Physician's and Surgeon's Certificate No. C 41449 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2014-010295, and will expire on February 29, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2014-010295 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 26, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2014-010295 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2014-010295. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 800-2014-010295 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2014-010295 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format ("PDF") and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

///

///

///

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 41449 issued to Respondent Raouf Antoine Kayaleh, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. CONTROLLED SUBSTANCES - TOTAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

If Respondent forms the medical opinion, after an appropriate prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

Upon successfully completion the clinical competence assessment program, Respondent may notify the Board of its successful completion and request that the prohibition on ordering, prescribing, dispensing, administering, furnishing, or possessing any controlled substances as

defined in the California Uniform Controlled Substances Act be lifted. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act until he has been notified by the Board or its designee in writing that the prohibition has been lifted.

2. EDUCATION COURSE. Within sixty (60) calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than forty (40) hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education ("CME") requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

3. PRESCRIBING PRACTICES COURSE. Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education ("CME") requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than fifteen (15) calendar days after successfully completing the course, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations ("CCR") section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education ("CME") requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than fifteen (15) calendar days after successfully completing the program or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

5. MEDICAL RECORD KEEPING COURSE. Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The

medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education ("CME") requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than fifteen (15) calendar days after successfully completing the course, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

6. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment,

the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If Respondent did not successfully complete the clinical competence assessment program, Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

Within 60 days after Respondent has successfully completed the clinical competence assessment program, Respondent shall participate in a professional enhancement program approved in advance by the Board or its designee, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation, or until the Board or its designee determines that further participation is no longer necessary.

7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to

Respondent. Respondent shall submit proof of compliance to the Board or its designee within fifteen (15) calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

8. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

9. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than ten (10) calendar days after the end of the preceding quarter.

11. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility. However, Respondent may continue to provide in-home care to the two existing patients to whom he is currently providing in-home care, only. Respondent must maintain a complete

copy of the medical records for these two specific patients in his medical office.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the dates of departure and return.

12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

14. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than one-hundred twenty (120) calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

15. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent

shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Thomas M. Garberson. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 6/15/18 R. Kayaleh

RAOUF ANTOINE KAYALEH, M.D.
Respondent

I have read and fully discussed with Respondent Raouf Antoine Kayaleh, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

THOMAS M. GARBERSON
Attorney for Respondent

shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Thomas M. Garberson. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: _____

RAOUF ANTOINE KAYALEH, M.D.
Respondent

I have read and fully discussed with Respondent Raouf Antoine Kayaleh, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/15/2018

THOMAS M. GARBERSON
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 6/15/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

LA2017506270

Exhibit A

Accusation No. 800-2014-010295

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
State Bar No. 179733
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-2655
Facsimile: (213) 897-9395
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: RAOUF ANTOINE KAYALEH, M.D. 1125 East 17th Street, Suite E-109 Santa Ana, California 92701 Physician's and Surgeon's Certificate No. C 41449, Respondent.	Case No. 800-2014-010295 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official capacity as the Executive Director of the Medical Board ("Board").

2. On July 2, 1984, the Board issued Physician's and Surgeon's Certificate number C 41449 to Raouf Antoine Kayaleh, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2018, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following provisions of the California Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"..."

5. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education

activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"..."

7. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

///

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

8. Section 725 of the Code states:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

"(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of

not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

"(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

"(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

9. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

10. Code section 4021 states:

"'Controlled substance' means any substance listed in chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

11. Code section 4022 provides:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only' or words of similar import.

"(b) Any device that bears the statement: 'Caution: federal law restricts this device to sale by or on the order of a _____,' 'Rx only,' or words of similar import.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

///

///

///

///

FACTUAL ALLEGATIONS

12. **Patient M.N.H.**[1]

a. In response to the Board's request for Respondent's medical records for Patient M.N.H., Respondent produced progress notes for 4 visits with Patient M.N.H.: August 7, 2013, April 28, 2014, September 24, 2014 and October 29, 2014.[2]

b. On May 29, 2013, Respondent issued a prescription to M.N.H. for hydrocodone-acetaminophen 10 mg/325 mg (200 tablets)[3] and lorazepam 1 mg (90 tablets).[4]

c. On June 14, 2013, Respondent issued a verbal authorization to refill a prescription to M.N.H. for hydrocodone-acetaminophen 10 mg/325 mg (10 tablets).

d. On June 20, 2013, Respondent issued a faxed prescription request authorizing a prescription to M.N.H. for Ativan 1 mg (90 tablets).[5]

e. On July 5, 2013, Respondent issued a verbal authorization to refill a prescription to M.N.H. for lorazepam 1 mg (10 tablets).

f. On July 15, 2013, Respondent issued a faxed prescription request authorizing a prescription to M.N.H. for Ativan 1 mg (90 tablets with two refills).

g. On July 22, 2013, Respondent issued a verbal authorization to refill a prescription to M.N.H. for Ativan 1 mg (90 tablets with one refill).

h. On August 1, 2013, Respondent issued a verbal authorization to refill a prescription to M.N.H. for hydrocodone-acetaminophen 10 mg/325 mg (20 tablets).

i. Respondent prepared a two-page type written progress note on his letterhead reflecting that he saw M.N.H. on August 7, 2013. The note reflected that Respondent "had a chance to initially see [the patient] at Chapman Medical Center where he was admitted with

---

[1] Initials are used for privacy purposes.

[2] As of August 7, 2013, M.N.H. was a then 38-year-old male patient.

[3] In 2013, hydrocodone-acetaminophen was a Schedule III Controlled Substance. Commencing on October 6, 2014, hydrocodone-acetaminophen became classified as a Schedule II Controlled Substance and a dangerous drug.

[4] Lorazepam is a Schedule IV Controlled Substance and a dangerous drug.

[5] Ativan, a brand name for lorazepam.

generalized pains." The note documented M.N.H.'s subjective history of his hospitalization and illnesses, including his history of diabetes and a chronic right foot callus that became infected following the hospitalization. Respondent noted performing a physical examination as well as making an assessment and recommendations, which included laboratory testing for diabetes, renal dysfunction, testosterone levels and anemia. Respondent also referred the patient to a urologist for complaints of erectile dysfunction. M.N.H. was instructed to follow up with Respondent after seeing "the other consultants."

j. Respondent made no reference to the May 29, 2013, June 14, 2013, June 20, 2013, July 5, 2013, July 15, 2013, July 22, 2013, and August 1, 2013 prescriptions for hydrocodone-acetaminophen and Ativan/lorazepam in the progress note dated August 7, 2013.

k. Respondent made no reference to safe prescribing of controlled substances in the progress note dated August 7, 2013.

l. On August 15, 2013, Respondent issued a verbal authorization to refill a prescription to M.N.H. for lorazepam 1 mg (10 tablets).

m. On September 1, 2013, Respondent issued a prescription to M.N.H. for hydrocodone-acetaminophen 10 mg/325 mg (20 tablets).

n. On September 2, 2013, Respondent issued a new prescription request for M.N.H. for hydrocodone-acetaminophen 10 mg/325 mg (200 tablets).

o. On September 20, 2013, Respondent issued a new prescription request for M.N.H. for hydrocodone-acetaminophen 10 mg/325 mg (200 tablets).

p. On September 30, 2013, Respondent issued a verbal authorization to refill a prescription to M.N.H. for hydrocodone-acetaminophen 10 mg/325 mg (200 tablets).

q. On October 16, 2013, Respondent issued a verbal authorization to refill a prescription to M.N.H. for lorazepam 1 mg (10 tablets).

r. M.N.H. was seen at Respondent's office for follow up on April 28, 2014.[6] Respondent noted that the patient had a long standing history of diabetes mellitus complicated by

[6] Respondent electronically signed the progress note dated April 28, 2014 on September 16, 2015 at 11:52 a.m.

severe peripheral neuropathy associated with severe pains. The patient was noted to be taking Norco[7] and Neurontin and requested "more pain medications." The patient was noted to have also requested a change in his insulin medication for his diabetes. Respondent noted that he conducted a physical examination. With respect to the patient's neurological examination, Respondent noted that it was physiological with no localized findings and that a detailed sensory examination was not performed. With respect to his assessment, Respondent noted that the patient's diabetes was not well controlled because of the patient's non-compliance with diet and medications. At the patient's request, Respondent changed his diabetes medications. With respect to the patient's peripheral neuropathy, Respondent noted that he would continue pain medications and add MS Contin 15 mg every 12 hours.[8] He further instructed the patient to schedule a follow up visit. Respondent made no reference to safe prescribing of controlled substances.

s. M.N.H. was seen at Respondent's office for follow up on September 24, 2014.[9] The patient reported that his diabetes was reasonably well controlled. Respondent noted that the patient had multiple superficial skin sores and complained of a cold. Respondent further noted that the patient remained "otherwise in pain, primarily from his peripheral neuropathy secondary to his diabetes." With respect to an objective examination, Respondent noted that the patient appeared in no acute distress, but had a temperature of 100.2 °F. The patient had multiple superficial skin ulcerations on his head, scalp and feet which the patient reported as being related to ant bites. Respondent noted that the patient's neurological examination was grossly nonfocal and that a detailed sensory examination was not performed. Respondent noted that he would consider rechecking the patient's blood work relative to his diabetes at a later date and provide local care for the patient's multiple superficial skin lacerations. He prescribed doxycycline, an

---

[7] Norco is a brand name for hydrocodone-acetaminophen.

[8] MS Contin (Morphine Sulfate Controlled-Release) is a Schedule II Controlled Substance and a dangerous drug.

[9] Respondent electronically signed the progress note dated September 24, 2014 on September 16, 2015 at 11:54 a.m.

antibiotic, for the patient's bronchitis, pneumonitis and skin infection. He refilled the patient's blood pressure medications, atenolol and amlodipine, and discontinued the blood pressure medication, hydralazine, which he noted that the patient was not using. Respondent instructed the patient to return in a month at which time Respondent would order blood tests. Respondent made no reference to safe prescribing of controlled substances.

t. M.N.H. was also seen at Respondent's office for follow up on October 29, 2014.[10] At that time, Respondent noted that he saw the patient "multiple times in the hospital and occasionally in the office." There are no hospital records in the patient's chart. It was noted that the patient's diabetes was reasonably well controlled, that he continued to have severe pain in both feet secondary to his neuropathy and that he was on a lot of medications including MS Contin 30 mg twice a day and Norco 10/325 mg two tablets every four hours for a total of 240 tablets for the month. Respondent further noted in the patient's chart:

> "There has been some investigation from the State Department of Health regarding the patient's excessive intake of narcotics, in particular the Norco as on counting, medications given by the pharmacy, he has totaled as many as 400 or 500 tablets per month and that seems somewhat unlikely. I went over the details on that with the patient, who claims that it was definitely impossible because he got 120 tablets free and then the remaining he had to pay for and did not have as much money to pay to get them anyway."

u. With respect to the examination of the patient on October 29, 2014, Respondent noted that the patient appeared remarkably well, his physical examination was essentially within normal limits and he was stable neurologically. Respondent noted that the patient's diabetes and blood sugars were reasonably well controlled but that the patient needed to ensure that he has food readily available at the time he takes his medications. With respect to the patient's peripheral neuropathy, Respondent continued the combination of morphine, Norco and Neurontin

[10] Respondent electronically signed the progress note dated October 29, 2014 on September 16, 2015 at 11:56 a.m.

to help with his pain. Respondent also noted that he attributed the patient's kidney dysfunction to his underlying diabetes. With respect to the patient's plan, Respondent noted:

"1. Adjustments in insulin as described.

"2. The patient's pain medication will be refilled, but I did instruct him that he will be referred to the pain clinic to attempt at helping any further with his problem.

"3. Diabetes well controlled.

"4. A repeat set of blood tests will also be obtained including hemoglobin A1c, a lipid profile and various other measurements.

"The patient is doing actually doing reasonably well at this point."

Respondent made no reference to safe prescribing of controlled substances.

v. Despite noting that he was referring M.N.H. to a pain clinic, Respondent's CURES Report reflects that subsequent to the October 29, 2014 office visit, he prescribed and M.N.H. filled prescriptions for the following medications:

1. In November 2014, Norco 10 mg/325 mg (240 tablets); Alprazolam 1 mg (180 tablets);[11] and morphine sulfate 30 mg (60 tablets);[12]

2. In December 2014, Norco 10 mg/325 mg (200 tablets); Alprazolam 1 mg (90 tablets); and morphine sulfate 30 mg (60 tablets);

3. In January 2015, Norco 10 mg/325 mg (240 tablets); Alprazolam 1 mg (90 tablets); and morphine sulfate 30 mg (60 tablets).

w. On September 20, 2016, at the time of his interview with the Board, Respondent re-produced his chart note for August 7, 2013. He also produced a progress notes for April 28, 2014 and September 24, 2014 which were formatted different from the previously produced medical records.

13. **Patient O.V.**

a. In response to the Board's request for Respondent's medical records for Patient O.V., Respondent produced progress notes for 9 visits, all of which were noted to have occurred

[11] Alprazolam is a Schedule IV Controlled Substance and a dangerous drug.

[12] Morphine Sulfate is a Schedule II Controlled Substance and a dangerous drug.

at Country Villa Nursing Home, as follows: September 1, 2014, November 11, 2014, December 17, 2014, January 5, 2015, January 27, 2015, February 5, 2015, March 24, 2015, May 7, 2015 and May 27, 2015.[13]

b. Patient O.V. filled multiple prescriptions at Sav-On Pharmacy in Santa Ana for hydrocodone-acetaminophen 10 mg/325 mg, issued by Respondent, during the time period of May 2012 through November 2014, including a prescription issued on Respondent's prescription pad dated March 9, 2014 and filled on March 10, 2014 for Norco 10 mg/325 mg (240 tablets). There is no reference to this controlled substance prescription in the medical records produced by Respondent.

c. On September 1, 2014, Respondent noted that he saw the patient at Country Villa Nursing Home and at that time, the patient looked better than when Respondent last saw the patient on July 30, 2014.[14] Respondent noted that the patient was status post right knee replacement with right knee swelling that had improved but was still painful. In addition, he noted that the patient was fairly functional. Respondent noted that the patient's diabetes was uncontrolled but that his hypertension was more or less controlled. The patient also had underlying chronic obstructive pulmonary disease (COPD), severe lumbar disc problems "with chronic pains on pain medications" and iron deficiency anemia. Respondent further noted that he would cut down some on the patient's Dilaudid.[15] Respondent made no reference to safe prescribing of controlled substances.

d. Pharmacy records reflect that on September 1, 2014, Respondent ordered Dilaudid 2 mg orally every three hours as needed at the skilled nursing facility.

e. On September 24, 2014 at Sav-On Pharmacy in Santa Ana, Patient O.V. filled a prescription for Norco 10 mg/325 mg (240 tablets) which had been issued on Respondent's prescription pad on September 22, 2014.

---

[13] As of September 1, 2014, O.V. was a then 67-year-old male patient.

[14] No medical records were produced for a July 30, 2014 visit.

[15] Dilaudid, also known as hydromorphone, is a Schedule II Controlled Substance and a dangerous drug.

f. On October 17, 2014 at Sav-On Pharmacy in Santa Ana, Patient O.V. filled a prescription for Norco 10 mg/325 mg (180 tablets) which had been issued that same day on Respondent's prescription pad.

g. On October 30, 2014, Respondent prescribed hydromorphone hydrochloride 2 mg/mL (solution to be administered by nursing staff, not to exceed 360 mLs in 60 days) and Morphine Sulfate extended release 15 mg (to be dispensed by nursing staff 1 tablet by mouth every 12 hours, not to exceed 120 tablets in 60 days).

h. On November 3, 2014, Respondent prescribed hydrocodone-acetaminophen 10 mg/325 mg (to be dispensed by nursing staff 1 tablet by mouth every 4 hours as needed, not to exceed 360 tablets in 60 days).

i. Respondent's next progress note for O.V. is dated November 11, 2014 at which time Respondent noted that the patient was on intravenous antibiotics following debridement of his right knee. The patient's diabetes was not very well controlled. He had presumed diarrhea and anemia with iron deficiency. Respondent noted that the patient was doing fair for the time and recommended continuing the present care. Respondent made no reference to safe prescribing of controlled substances.

j. In November 2014 while at the skilled nursing facility, O.V. received hydrocodone-acetaminophen 10 mg/325 mg (210 tablets); Morphine Sulfate Extended-Release 15 mg (30 tablets); and, hydromorphone hydrochloride (240 mg/mL) prescribed by Respondent.

k. Respondent's next progress note for O.V. is dated December 17, 2014 at which time Respondent noted that the patient was to remain on antibiotics for six weeks secondary to his right knee infection. His erythrocyte sedimentation rate (ESR) had not yet normalized and his C-Reactive Protein (CRP) remained elevated. Respondent noted that he would continue to follow the laboratory values on a weekly basis. Respondent noted that he would adjust the patient's diabetes medication secondary to his elevated blood sugar levels at times. He also recommended ruling out C. difficile in light of the patient being on antibiotics for a prolonged period of time. Respondent also noted "chronic back pain on medications." He further set forth that the patient

///

was actually doing better. Respondent made no reference to safe prescribing of controlled substances.

l. On December 24, 2014, Respondent prescribed hydrocodone-acetaminophen 10 mg/325 mg (to be dispensed by nursing staff 1 tablet by mouth every 4 hours as needed, not to exceed 360 tablets in 60 days).

m. On December 25, 2014, Respondent prescribed hydromorphone hydrochloride 2 mg/mL (solution to be administered by nursing staff, not to exceed 360 mLs in 60 days).

n. Respondent's next progress note for O.V. is dated January 5, 2015 at which time he noted that the patient was continued on vancomycin for his infection post right knee replacement. His ESR and CRP values were improving and antibiotics would be discontinued once his ESR and CRP values were close to normal. The patient's diabetes remained somewhat uncontrolled and his medication was adjusted for improvement of his blood sugars. The patient's hypertension was noted to be controlled. It was noted that the patient complained of arthritis in his left knee and indicated that in the future, he would like to have that knee replaced too. Respondent concluded, "[the patient] is doing at this moment actually quite well, both physically and emotionally. His pain is controlled." Respondent made no reference to safe prescribing of controlled substances.

o. Respondent's next progress note for O.V. is dated January 27, 2015 at which time he noted that the patient had gradual improvement in his knee arthritis, ESR and CRP and that treatment would be continued pending orthopedic re-evaluation. Respondent noted that the patient had left knee arthritis with pain as well and was looking forward to having the left knee replaced. With respect to the patient's diabetes, his blood sugar level was not very well controlled, though better with the medication adjustment. The patient's hypertension was controlled. Respondent further noted "low back pain, lumbar spine disease, on pain medication." Respondent made no reference to safe prescribing of controlled substances.

p. In January 2015 while at the skilled nursing facility, O.V. received hydrocodone-acetaminophen 10 mg/325 mg (180 tablets) and hydromorphone hydrochloride (80 mg/mL), prescribed by Respondent.

q. Respondent's next progress note for O.V. is dated February 5, 2015 at which time he noted that the patient remained on antibiotics for the infection status post prosthetic right knee replacement but antibiotics could probably be discontinued. He further noted that the patient's diabetes remained out of control, his obstructive airway disease was stable, his hypertension was controlled and his anemia resolved. Respondent further noted "severe low back pain, not on medication."

r. On February 23, 2015, Respondent prescribed hydromorphone hydrochloride 2 mg/mL (solution to be administered by nursing staff, 360 mLs) and hydrocodone-acetaminophen 10 mg/325 mg (to be dispensed by nursing staff 1 tablet by mouth every 4 hours as needed, not to exceed 360 tablets in 60 days).

s. In February 2015 while at the skilled nursing facility, O.V. received hydrocodone-acetaminophen 10 mg/325 mg (180 tablets) and hydromorphone hydrochloride (80 mg/mL) prescribed by Respondent.

t. On March 23, 2015, Respondent prescribed hydromorphone hydrochloride 2 mg/mL (solution to be administered by nursing staff, not to exceed 480 mLs in 60 days).

u. Respondent's next progress note for O.V. is dated March 24, 2015 at which time Respondent noted that the patient's right knee infection had resolved, his diabetes was not very well controlled, his hypertension was controlled and the patient had COPD. Respondent further noted "chronic back pain related to lumbar disc problems" and "plan for the time being is to continue his present care with pain management as well." Respondent made no reference to re-initiation of controlled substances or safe prescribing of controlled substances.

v. On March 25, 2015, Respondent prescribed hydrocodone-acetaminophen 10 mg/325 mg (to be dispensed by nursing staff 1.5 tablets by mouth every 4 hours as needed, not to exceed 540 tablets in 60 days).

w. In March 2015 while at the skilled nursing facility, O.V. received hydrocodone-acetaminophen 10 mg/325 mg (360 tablets) and hydromorphone hydrochloride (240 mg/mL) prescribed by Respondent.

///

x. In April 2015 while at the skilled nursing facility, O.V. received hydrocodone-acetaminophen 10 mg/325 mg (270 tablets) and hydromorphone hydrochloride (200 mg/mL) prescribed by Respondent.

y. Respondent's next progress note for O.V. is dated May 7, 2015 at which time he noted that the patient had been re-admitted to the facility in March following a left knee replacement and was doing quite well. Respondent noted that the patient's diabetes was reasonably well controlled, his COPD was stable and that he had "low back pain secondary to spinal cord disease and disc problems." Respondent made no reference to safe prescribing of controlled substances.

z. Respondent's last progress note for O.V. is dated May 27, 2015 at which time he noted that the patient was stable, status post left knee replacement with some pain that improved, status post right knee replacement with secondary infection resolved, chronic low back pain, controlled diabetes, controlled hypertension and COPD that was not a major problem at the time. Respondent also noted that the patient had other issues related to his abdomen from prior surgeries, which had resolved. Respondent noted that the patient would probably be discharged at the end of the month and arrangements were being made as to where he would be living. Respondent made no reference to safe prescribing of controlled substances.

aa. In May 2015 while at the skilled nursing facility, O.V. received hydrocodone-acetaminophen 10 mg/325 mg (225 tablets) and hydromorphone hydrochloride (160 mg/mL) prescribed by Respondent.

bb. On September 20, 2016, at the time of his interview with the Board, Respondent produced medical records for O.V. for the time period of January 26, 2014 through September 1, 2014. None of these records made reference to safe prescribing of controlled substances.

14. **Patient G.S.**

a. In response to the Board's request for Respondent's medical records for Patient G.S., Respondent produced progress notes for 14 visits: April 16, 2010, June 28, 2010, October 15, 2010, January 7, 2011, March 16, 2011, July 18, 2011, September 23, 2011, December 27,

2011, January 9, 2012, May 22, 2012, June 20, 2012, January 9, 2013, May 14, 2013, November 4, 2013.[16]

b. Respondent saw the patient on April 16, 2010 at which time he noted that he has seen the patient from time to time for several years. The patient reported that she had episodes of blanking and staring and was eventually diagnosed with some form of a seizure for which she was placed on Depakote 500 mg twice a day. She complained that the medication made her sleepy. She also complained of tremors of unclear etiology and intermittent headaches for which she takes Vicodin.[17] Respondent noted that the patient's diabetes was well controlled and her headaches were stable. Respondent further noted that the diagnostic work up of her possible seizures was nonrevealing and he switched her medication to once a day at 1000 mg to be taken at nighttime. He also recommended that she be started on methimazole for hyperthyroidism.

c. Respondent saw the patient on June 28, 2010 at which time he noted that she had undergone occupational therapy following surgery on her right upper extremity secondary to a ligament tear. He noted that the patient was taking Vicodin ES[18] for pain associated with her shoulder. She also complained of neuropathy related left-sided abdominal discomfort. She claimed that her diabetes was somewhat under control. She complained of tooth and gingival pain with a possible tooth infection on the left side and that she would be seeing a dentist for it. Respondent recommended laboratory testing for the patient's diabetes and continued occupational therapy for the right upper extremity problems status post surgery. He also gave the patient erythromycin, an antibiotic, for the dental issue.

d. Respondent saw the patient on October 15, 2010 at which time the patient reported that her dentist was removing teeth as a result of her constant grinding. Her blood sugar levels were elevated and she remained on various medications for her multiple problems

---

[16] G.S. was a then 52-year-old female patient as of April 16, 2010.

[17] Vicodin is a brand name for hydrocodone-acetaminophen.

[18] Vicodin ES is a brand name for hydrocodone-acetaminophen.

including, Vicodin ES for her pain, Lorazepam for anxiety, "another medication for pain and muscle spasm," Plavix, furosemide, metformin for diabetes, Zetia for cholesterol and clonidine for hypertension. He further noted that while the patient was last hospitalized, she was on valproic acid (Depakote), an anticonvulsant, for the possibility of seizures but discontinued it due to an odd reaction to it. With respect to the patient's physical examination, Respondent noted that the patient was in acute distress. Respondent recommended laboratory studies for the patient's diabetes, hypertension, overweight status, history of tremors, possible seizures and hyperthyroidism.

e. Respondent saw the patient on January 7, 2011 at which time he noted that the patient's diabetes was not well controlled and that the patient had occasional complications. The patient complained of right shoulder problems which had been addressed by an orthopedist with some benefit from orthopedic intervention. He noted that her hyperthyroidism, seizure-like activity and hypertension were all under control. Respondent recommended adjusting the patient's diabetes medication and placing her on hyperlipidemia for her cholesterol.

f. Respondent saw the patient on March 16, 2011 at which time he noted that the patient's underlying diabetes was complicated by neuropathy with occasional lower extremity pain for which she was on pain medication. She was also on pain medications for migraines. Respondent noted that he discussed the use of Neurontin to help with the pain but that the patient claimed she tried it previously and it made her extremely sleepy. With respect to medications, Respondent noted that the patient was taking Lorazepam 1 mg at bedtime, 1 tablet of Vicodin ES every 6 hours, Soma 350 mg three times a day,[19] Plavix, Lasix, metformin 500 mg three times a day, clonidine, Compazine as needed and insulin. Respondent's note did not set forth an assessment and plan. Further, Respondent made no reference to safe prescribing of controlled substances.

g. Respondent saw the patient on July 18, 2011 at which time the patient complained that her migraine headache remained an issue. The patient reported that her diabetes

[19] On December 12, 2011, Soma, a brand name of the general drug carisoprodol, became classified as a Schedule IV Controlled Substance and a dangerous drug.

was under control. She further reported that she had been placed on Dilantin following a seizure diagnosis but that she stopped the medication because of the side effects. Further she reported that she was being treated for hypothyroidism. Respondent noted that she had recently been re-admitted to the hospital "for unclear issues" and that he did not have the records. He also noted that she was taking lorazepam, Vicodin ES (for pain, primarily her headaches), Soma, Plavix, furosemide, metformin (for her diabetes), Taztia (for her hypertension), clonidine (for her hypertension), methimazole (for her thyroid), a "very high dose" of insulin and Dilantin. Respondent recommended laboratory studies to evaluate the patient's diabetes, hyperlipidemia and hypothyroidism.[20] He also recommended a topical lotion, Clobex, for her skin rash and noted that the patient remained on Vicodin for her various body pains. Respondent made no reference to safe prescribing of controlled substances.

h. Respondent saw the patient on September 23, 2011 at which time, he noted that the patient's diabetes was difficult to control. She had some form of a seizure disorder, thyroid problems, was overweight and had possible obstructive sleep apnea. Respondent noted that the patient had frequent hospitalizations in the past 1-2 years and she was frustrated because her medical insurer would not permit Respondent to follow her or participate in her hospital care. Respondent adjusted the patient's seizure medications for her seizure disorder and he noted that her blood sugar levels continued to be elevated at times.

i. Respondent saw the patient on December 27, 2011 at which time the patient complained of an eye issue that resulted in two emergency room visits for the same problem. She was diagnosed with having shingles involving the right eye and had been placed on the antibiotic, acyclovir. The patient reported that her blood sugar levels were elevated while she was sick and that it was not checked at the hospital. With respect to Respondent's assessment and recommendations, he noted that the patient had shingle infection involving the right eye or ophthalmic nerve and that she had herpes zoster infection involving the trigeminal nerve with associated severe pain and eye extension. He noted that the patient had been on acyclovir for about a week without significant improvement and referred her to an ophthalmologist for

[20] All prior references to the patient's thyroid condition have been hyperthyroid, not hypothyroid.

immediate evaluation. Respondent made no reference to safe prescribing of controlled substances.

j. Respondent saw the patient on January 9, 2012 at which time he noted that the ophthalmologist reported that the patient's eye infection was not related to the shingles. The patient also had a skin infection on her right cheek which had worsened to the point of requiring an emergency room visit and hospitalization for antibiotic treatment. Respondent noted that he did not have the hospital records to review. He further noted that the patient reported that her blood sugar levels were not controlled at the time she had the acute infection but became more controlled once the infection improved. The patient also complained of gum pain and difficulty with breathing occasionally with activities and occasional wheezing when she lays down. Respondent noted improvement of the recent shingles infection; resolved secondary conjunctivitis, much improved right cheek bacterial infection, no recent seizures but she had an adjustment in her medication, better controlled diabetes with laboratory studies to be performed, and treatment of hyperlipidemia that needed to be rechecked. He further noted that the shortness of breath with reported wheezing when she goes to bed may be "bronchial related or cardiac" and needed to be further identified. Respondent noted that the patient was doing overall much better than the last time he saw her and recommended continuing the present care. Respondent made no reference to safe prescribing of controlled substances.

k. On March 1, 2012, Respondent prescribed the patient hydrocodone-acetaminophen 7.5 mg/750 mg (120 tablets with four refills). On March 11, 2012, Respondent prescribed the patient Carisoprodol 350 mg (90 tablets with four refills). On May 1, 2012, Respondent prescribed the patient Carisoprodol 350 mg (90 tablets with four refills). On May 7, 2012, Respondent prescribed the patient Lorazepam 1 mg (30 tablets with three refills). On May 8, 2012, Respondent prescribed the patient Vicodin 5 mg/500 mg (120 tablets with one refill).

l. Respondent saw the patient on May 22, 2012 at which time she reported that she had been seen in an emergency room because of a seizure episode. She was discharged home the same day and it was recommended that she see a neurologist. She also complained of a burning sensation and discomfort when urinating and that she continued to have quite severe

headaches. Further, she had been seen by an ophthalmologist for an infection but had not been seen for diabetic retinopathy. Respondent recommended increasing her Keppra for her recurrent seizures but indicated that she should still see a neurologist. He further noted that the signs and symptoms of a urinary tract infection were due to her sugar level being out of control and he recommended laboratory studies and the antibiotic, ciprofloxacin. Further, Respondent recommended checking the patient's thyroid function and lipid profile. Respondent made no reference to safe prescribing of controlled substances.

m. The patient underwent laboratory testing on May 23, 2012 which revealed signs of anemia with a low red blood count of 3.46, low hemoglobin of 11.1, and low hematocrit of 32.3.

n. On June 18, 2012, Respondent prescribed the patient Carisoprodol 350 mg, (90 tablets) and Norco 10 mg/325 mg (180 tablets).

o. Respondent saw the patient on June 20, 2012. Only page two of his progress note for the visit was produced to the Board. Upon examination, Respondent noted that the patient appeared in no acute distress, her extremities had no gross edema and neurologically, her examination was nonfocal. Respondent noted that he reviewed the patient's laboratory data. With respect to Respondent's assessment and recommendations, he noted that the patient would be referred to an endocrinologist for her hyperthyroidism, he would adjust the patient's diabetes medication, he would refer the patient to a gynecologist for her complaints of vaginal bleeding, he would refer the patient to physical therapy for her cervical and back pain and he would refer the patient to an ophthalmologist because of her diabetes. Respondent made no reference to safe prescribing of controlled substances.

p. Throughout the remainder of 2012, Respondent prescribed the following medications to the patient:

On July 9, 2012, Soma 350 mg (90 tablets with five refills).

On July 23, 2012, Norco 10 mg/325 mg (180 tablets with three refills).

On July 27, 2012, Soma 350 mg (90 tablets with three refills).

On August 18, 2012, Norco 10 mg/325 mg (180 tablets).

On August 29, 2012, Lorazepam 1 mg (30 tablets with four refills).

On September 3, 2012, Soma 350 mg (90 tablets).

On September 11, 2012, hydrocodone-acetaminophen 7.5 mg/750 mg (120 tablets).

On September 23, 2012, Soma 350 mg (90 tablets).

On October 3, 2012, Soma 350 mg (90 tablets with four refills).

On October 19, 2012, Norco 10 mg/325 mg (180 tablets).

On October 23, 2012, Soma 350 mg (90 tablets with three refills).

October 26, 2012, hydrocodone-acetaminophen 7.5 mg/750 mg (120 tablets).

November 20, 2012, Norco 10 mg/325 mg (180 tablets).

December 5, 2012, hydrocodone-acetaminophen 7.5 mg/750 mg (120 tablets with three refills).

On December 19, 2012, Norco 10 mg/325 mg (180 tablets).

q. Respondent saw the patient on January 9, 2013 at which time, he noted that the patient's diabetes was under control. The patient reported a recent hospital admission following having abdominal pain, repeated episodes of nausea and vomiting which caused some seizures because her medications were not absorbing well. She reported that while in the hospital she was on various intravenous medications and that she may have had treatment for a urinary tract infection and bowel infection. Respondent noted that the patient's diabetes and seizures were presently controlled. He further noted that the patient's various musculoskeletal aches and pains, peripheral neuropathy and migraines were controlled with medications. He noted that she was doing well and he would have a blood test done to recheck her thyroid function, hemoglobin and lipid profile. He recommended that the patient return in approximately two months but would be called if there were any problems with her laboratory studies. Respondent made no reference to safe prescribing of controlled substances.

r. On January 10, 2013, Respondent prescribed the patient Soma 350 mg (90 tablets) and Norco 10 mg/325 mg (180 tablets). On January 22, 2013, Respondent prescribed the patient Lorazepam 1 mg (30 tablets with three refills). On February 2, 2013, Respondent

prescribed the patient Soma 350 mg (90 tablets with three refills). On February 12, 2013, Respondent prescribed the patient Soma 350 mg (90 tablets with two refills). On March 13, 2013, Respondent prescribed the patient Norco 10 mg/325 mg (180 tablets with three refills). On May 7, 2013, Respondent prescribed the patient Carisoprodol 350 mg (90 tablets with three refills).

s. Respondent saw the patient on May 14, 2013 at which time, he noted that her diabetes was not under control. The patient also reported that she had quite a few small seizure events but not severe enough to require hospitalization. She also complained of discharge from her right breast and continuing to have headaches. Respondent recommended laboratory studies for her diabetes and a mammogram. He noted that she had hyperthyroidism and was on methotrexate. He recommended that the patient follow up in about a month and that he would call her earlier depending on the results of her laboratory studies. Respondent made no reference to safe prescribing of controlled substances.

t. On May 29, 2013, Respondent prescribed the patient Norco 10 mg/325 mg (180 tablets) and Soma 350 mg (90 tablets). On June 19, 2013, Respondent prescribed the patient Dilaudid 2 mg (120 tablets). On July 25, 2013, Respondent prescribed the patient Norco 10 mg/325 mg (180 tablets). On August 9, 2013, Respondent prescribed the patient Vicodin 7.5 mg/325 mg (20 tablets). On October 26, 2013, Respondent prescribed the patient Soma 350 mg (90 tablets with two refills).

u. Respondent saw the patient on November 4, 2013 at which time he noted that the patient "is now being followed by another primary physician so that I could actually see her in a little while." He noted that the patient had been recently admitted to the hospital after episodes of nausea and vomiting and this interfered with her medication intake. She had under absorption of her seizure medications with associated seizure disorder. She was further admitted for continued management and to be investigated for neck and back pain. She had difficulty breathing which was thought to be related to her thyroid gland and Respondent noted that she had been diagnosed with hyperthyroidism a while ago. "The patient is actually seeing a pain physician for the above, but there have been some concerns about the medications she is on." He

noted that she underwent epidurals without much help and was participating in pool therapy. She complained of continued pain in the neck and back. With respect to his assessment and recommendations, Respondent noted that the patient had a long-standing seizure disorder and was taking Keppra. Further he noted that her recurrent episodes were most likely because of her failure to absorb medications while she was having nausea, vomiting and diarrhea but she was since controlled and stable. Respondent recommended laboratory testing and referred her to an endocrine physician to help further with the thyroid management. In an addendum, Respondent noted that it was not recommended that the patient undergo epidural injections due to her diabetes and the possible increase of blood sugar levels. Respondent made no reference to safe prescribing of controlled substances.

v. From November 2013 through October 2014, Respondent prescribed the following medications to the patient:

November 7, 2013, Vicodin 7.5 mg/325 mg (120 tablets), Lorazepam 1 mg (30 tablets) and Soma 350 mg (90 tablets).

December 18, 2013, Norco 10 mg/325 mg (180 tablets).

January 8, 2014, Vicodin 7.5 mg/325 mg (180 tablets).

January 10, 2014, Lorazepam 1 mg (30 tablets with 4 refills).

February 5, 2014, hydrocodone-acetaminophen 7.5 mg/325 mg (180 tablets with four refills).

March 11, 2014, Soma 350 mg, (90 tablets with two refills).

May 13, 2014, Norco 10 mg/325 mg (180 tablets).

June 6, 2014, Lorazepam 1 mg (30 tablets).

July 2, 2014, Lorazepam 1 mg (30 tablets).

September 3, 2014, Lorazepam 1 mg (30 tablets).

September 3, 2014, Carisoprodol 350 mg (90 tablets).

September 29, 2014, Lorazepam 1 mg (30 tablets).

October 1, 2014, Norco 10 mg/325 mg (180 tablets).

///

October 24, 2014, Norco 10 mg/325 mg (120 tablets) and Soma 350 mg (90 tablets).

October 27, 2014, Lorazepam (30 tablets with four refills).

15. Respondent did not have Controlled Substance Agreements for patients M.N.H., O.V. and G.S. At the time of his interview with the Board on September 20, 2016, Respondent stated that he does not have Controlled Substance Agreements with those patients for whom he prescribes controlled substances.

STANDARD OF CARE

16. The standard of medical practice in California for a practitioner prescribing controlled substances requires that the practitioner use a Controlled Substance Agreement for patients who are on or are anticipated to be on opioids for a period greater than 90 days for the purposes of controlling non-malignancy-related pain. A Controlled Substance Agreement should address, but is not limited to: specific reasons for which pharmacologic therapy may be changed or discontinued; the patient's responsibility for safe medication use; the patient's responsibility to obtain the prescription and fill the prescription for only one physician and from one pharmacy; the patient's agreement to periodic, random drug testing; the requirement of producing a police report for lost or stolen prescription(s) or controlled substances; and the option of the primary legal prescriber to not renew or consider structured tapered cessation of opioids due to violation of the Controlled Substance Agreement.

17. The standard of medical practice in California for a practitioner prescribing controlled substances requires that the practitioner document the assessment of the indications, benefits, risks, alternatives (and offer of alternatives), adverse effects, effectiveness, and/or precautions regarding the safe prescribing of controlled substances.

18. The standard of medical practice in California for a practitioner managing the care and treatment of patients with peripheral neuropathy requires that the practitioner consider and discuss with the patient all available treatment options including the risks and benefits before initiating or continuing treatment.

///

19. The standard of medical practice in California for a practitioner managing the care and treatment of a patient with signs and symptoms of anemia requires a work up the cause of the anemia (i.e., repeated laboratory tests and diagnostic tests).

20. The standard of medical practice in California for a practitioner managing the care and treatment of a patient with herpes zoster ophthalmicus is to order parenteral acyclovir and acute hospitalization.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence in Failing to Maintain Controlled Substance Agreements – Patients M.N.H, O.V. and G.S.)

21. Respondent is subject to disciplinary action under Code Section 2234, subdivision (b), in that he engaged in gross negligence by failing to maintain Controlled Substance Agreements for Patients M.N.H., O.V. and G.S. Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 16, above, as though fully set forth herein. The circumstances are as follows:

22. Respondent prescribed controlled substances to Patient M.N.H. from May 2013 through January 2015 and did not maintain a Controlled Substance Agreement.

23. Respondent prescribed controlled substances to Patient O.V. from May 2012 through May 2015 and did not maintain a Controlled Substance Agreement.

24. Respondent prescribed controlled substances to Patient G.S from March 2012 through October 2014 and did not maintain a Controlled Substance Agreement.

25. Respondent's acts and/or omissions as set forth in paragraphs 12 through 16, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence in Failing to Safely Prescribe Controlled Substances – Patients M.N.H, O.V. and G.S.)

26. Respondent is subject to disciplinary action under Code Section 2234, subdivision (b), in that he engaged in gross negligence by failing to safely prescribe controlled substances to

Patients M.N.H., O.V. and G.S. Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 17, above, as though fully set forth herein. The circumstances are as follows:

27. Respondent prescribed controlled substances to Patient M.N.H. from May 2013 through January 2015 and made no reference in his progress notes to safe prescribing of controlled substances.

28. Respondent prescribed controlled substances to Patient O.V. from May 2012 through May 2015 and made no reference in his progress notes to safe prescribing of controlled substances.

29. Respondent prescribed controlled substances to Patient G.S from March 2012 through October 2014 and made no reference in his progress notes to safe prescribing of controlled substances.

30. Respondent's acts and/or omissions as set forth in paragraphs 12 through 17, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence in the Management of Peripheral Neuropathy – Patients M.N.H and G.S.)

31. Respondent is subject to disciplinary action under Code Section 2234, subdivision (b), in that he engaged in gross negligence in his management of peripheral neuropathy in Patients M.N.H and G.S. Complainant refers to and, by this reference, incorporates herein, paragraphs 12, 14 and 18, above, as though fully set forth herein. The circumstances are as follows:

32. Respondent failed to consider and discuss the available treatment options including risks and benefits before continuing the management and treatment of M.N.H.'s peripheral neuropathy.

///

///

33. Respondent failed to consider and discuss the available treatment options including risks and benefits before continuing the management and treatment of G.S.'s peripheral neuropathy.

34. Respondent's acts and/or omissions as set forth in paragraphs 12, 14 and 18, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore cause for discipline exists.

FOURTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts – Patients M.N.H, O.V. and G.S.)

35. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code, in that he engaged in repeated acts of negligence in the care and treatment of Patients M.N.H., O.V. and G.S. Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 20, above, as though fully set forth herein.

A. Respondent was negligent in the care and treatment of M.N.H. The circumstances are as follows:

1. Respondent prescribed controlled substances to Patient M.N.H. from May 2013 through January 2015 and did not maintain a Controlled Substance Agreement.

2. Respondent prescribed controlled substances to Patient M.N.H. from May 2013 through January 2015 and made no reference in his progress notes to safe prescribing of controlled substances.

3. Respondent failed to consider and discuss the available treatment options including risks and benefits before continuing the management and treatment of M.N.H.'s peripheral neuropathy.

B. Respondent was negligent in the care and treatment of O.V. The circumstances are as follows:

1. Respondent prescribed controlled substances to Patient O.V. from May 2012 through May 2015 and did not maintain a Controlled Substance Agreement.

///

///

2. Respondent prescribed controlled substances to Patient O.V. from May 2012 through May 2015 and made no reference in his progress notes to safe prescribing of controlled substances.

C. Respondent was negligent in the care and treatment of G.S. The circumstances are as follows:

1. Respondent prescribed controlled substances to Patient G.S from March 2012 through October 2014 and did not maintain a Controlled Substance Agreement.

2. Respondent prescribed controlled substances to Patient G.S from March 2012 through October 2014 and made no reference in his progress notes to safe prescribing of controlled substances.

3. Respondent failed to consider and discuss the available treatment options including risks and benefits before continuing the management and treatment of G.S.'s peripheral neuropathy.

4. When G.S. had signs and symptoms of anemia, Respondent failed to work up the cause of the anemia, including repeated laboratory tests and diagnostic tests.

5. When Respondent assessed G.S. as having herpes zoster ophthalmicus, he failed to recommend hospitalization and order parenteral acyclovir.

36. Respondent's acts and/or omissions as set forth in paragraphs 12 through 20, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (c), of the Code. Therefore cause for discipline exists.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Furnishing Dangerous Drugs Without Examination – Patients M.N.H, O.V. and G.S.)

37. Respondent is subject to disciplinary action under Code section 2242, subdivision (a), in that he committed unprofessional conduct when he prescribed dangerous drugs to Patients M.N.H., O.V. and G.S. without an appropriate prior examination or medical indication therefor. Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 36, above, as though fully set forth herein.

38. Respondent's acts and/or omissions as set forth in paragraphs 12 through 36, above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to section 2242, subdivision (a), of the Code. Therefore cause for discipline exists.

SIXTH CAUSE FOR DISCIPLINE

(Excessive Prescribing - Patients M.N.H, O.V. and G.S.)

39. Respondent is subject to disciplinary action under Code section 725, in that he excessively prescribed dangerous drugs to Patients M.N.H., O.V. and G.S. Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 38, above, as though fully set forth herein.

40. Respondent's acts and/or omissions as set forth in paragraphs 12 through 38, above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to section 725. Therefore cause for discipline exists.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Accurate and Adequate Medical Records – Patients M.N.H, O.V. and G.S.)

41. Respondent is subject to disciplinary action under section 2266 of the Code for failing to maintain adequate and accurate records relating to his care and treatment of Patients M.N.H., O.V. and G.S. Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 17, above, as though fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 41449, issued to Raouf Antoine Kayaleh, M.D.;

2. Revoking, suspending or denying approval of his authority to supervise physician assistants pursuant to section 3527 of the Code and advanced practice nurses;

///

3. If placed on probation, ordering him to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: September 26, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

LA2017506270